

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Trademark Application
Serial No: 76/219,371
Mark: "EZgo"
Class: 009
Applicant: Atoz Technology (Taiwan) Inc.



11-12-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #01

Published in the Official Gazette of
June 11, 2002 at Page TM 376

ZiLOG, Inc.

Opposer

vs.

Atoz Technology (Taiwan) Inc.

Applicant

Opposition No.: Not yet assigned

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Notice of Opposition

Sir:

Opposer, ZiLOG, Inc., having its principal place of business at 532 Race Street, San Jose, California 95126, believes it will be damaged by registration of the alleged mark of the above-referenced application and hereby opposes same.

The grounds for the Opposition are set forth below.

1. Opposer is the owner of U.S. Trademark Registration No. 2,618,582, issued on September 10, 2002, for the mark EZ80 ("EZ80 Mark"), for "integrated circuits; computer software, firmware and hardware for enhancing the performance of integrated circuits; support tools for integrated circuits, namely, evaluation boards, assemblers, linkers, compilers and debuggers" in International Class 9 ("EZ80 Goods").

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2. Opposer's U.S. Trademark Registration No. 2,618,582 is based on U.S. Trademark Application No. 75/799,856, which was filed on September 15, 1999, such that Opposer's date of constructive use of the EZ80 Mark on or in connection with the EZ80 Goods is September 15, 1999.

3. Opposer has used and is continuing to use the EZ80 mark in interstate commerce on or in connection with the EZ80 Goods.

4. Opposer is also the owner of U.S. Trademark Application No. 76/273,769, filed on June 19, 2001, for the mark Z80 ("Z80 Mark"), for "microcomputer components, namely, microcomputer central processor units and embedded processor units, peripherals therefor, and integrated circuits; softcore media containing descriptive or coded information for designing, developing or generating a silicon product; and support products and tools for the foregoing products, namely, evaluation boards, assemblers, linkers, compilers, debuggers, and simulators" in International Class 9 ("Z80 Class 9 Goods") and for "product and instruction manuals, books and brochures for microcomputer components, peripherals therefor, integrated circuits, softcore media, and support products and tools for the foregoing products, namely, evaluation boards, assemblers, linkers, compilers, debuggers, and simulators" in International Class 16 ("Z80 Class 16 Goods"), which application has been published.

5. Opposer's U.S. Trademark Application No. 76/273,769 recites Opposer's date of first use of the Z80 Mark on or in connection with the Z80 Class 9 Goods as on or prior to January, 1981, and as on or prior to April 22, 1976 in a previous version, Z-80; date of first use in interstate commerce of the Z80 Mark on or in connection with the Z80 Class 9 Goods as on or prior to January, 1981, and as on or prior to April 24, 1976 in a previous version, Z-80; and date of first use and date of first use in interstate commerce of the Z80 Mark on or in connection with the Z80 Class 16 Goods as on or prior to January, 1981.

6. Opposer has used and is continuing to use the Z80 Mark in interstate commerce on or in connection with the Z80 Class 9 Goods and the Z80 Class 16 Goods.

7. Opposer is additionally the owner of U.S. Trademark Registration No. 1,174,161, issued on October 27, 1981, for the mark Z8 ("Z8 Mark"), for "microcomputers" ("Z8 Goods") in International Class 9, which registration is incontestible.

8. Opposer's U.S. Trademark Registration No. 1,174,161 is based on U.S. Trademark Application No. 73/255,161 that was filed on March 24, 1980, which recites Opposer's date of first use and date of first use in interstate commerce of the Z8 Mark on or in connection with the Z8 Goods as February 15, 1980.

9. Opposer has used and is continuing to use the Z8 Mark in interstate commerce on or in connection with the Z8 goods.

10. Opposer has used and is continuing to use a family of marks ("Family of Marks") comprising at least the EZ80 Mark, the Z80 Mark, and the Z8 Mark. Opposer has expanded its Family of Marks and use or intended use thereof to include one or more of the following marks: EZ80 (Stylized) of published U.S. Trademark Application No. 76/356,060; Z80 (Stylized) of published U.S. Trademark Application No. 76/356,154; Z8 ENCORE! of U.S. Trademark Application No. 76/440,360; Z8 ENCORE! LITE of U.S. Trademark Application No. 76/151,989; and Z9 of allowed U.S. Trademark Application No. 78/073,128.

11. As a result of Opposer's use of the EZ80 Mark, the Z80 Mark, the Z8 Mark, and its Family of Marks, Opposer has established substantial good will in same and the public has come to associate same with the products of Opposer.

12. Applicant filed U.S. Trademark Application No. 76/219,371 ("Applicant's Application") on March 5, 2001, seeking to register the alleged stylized mark depicted directly below

EZ80

("EZ??") for "computers, computer hardware, computer peripherals, central processing units for computers, CD-ROM drives, DVD drives, and CD-RW drives" in International Class 9 ("EZ?? Goods").

13. In Applicant's Application, Applicant alleges a date of first use of EZ?? on or in connection with the EZ?? Goods as August, 2000 and a date of first use of EZ?? on or in connection with the EZ?? Goods in commerce as December, 2000.

14. Applicant's Application was filed just under one and a half years after the constructive use date of September 15, 1999 associated with Opposer's U.S. Trademark Registration No. 2,618,582 for the EZ80 Mark. In Applicant's Application, Applicant alleges a date of first use that is just under one year later than this constructive use date and a date of

first use in commerce that is about or over one year and three months later than this constructive use date.

15. In Applicant's Application, Applicant alleges a date of first use and a date of first use in commerce that are just under 20 years later than those associated with Opposer's Z80 Mark as used on or in connection with the Z80 Class 9 Goods; over at least 24 years later than those associated with the Z80 Mark in a previous version, Z-80, as used on or in connection with the Z80 Class 9 Goods; and just under 20 years later than those associated with the Z80 Mark as used on or in connection with the Z80 Class 16 Goods.

16. In Applicant's Application, filed over 20 years after the filing date associated with Opposer's U.S. Registration No. 1,174,161 for the Z8 Mark, Applicant alleges a date of first use and a date of first use in commerce that are over 20 years later than those associated with Opposer's Z8 Mark as used on or in connection with the Z8 Goods.

17. Applicant's EZ?? Goods, namely, computers, computer hardware, computer peripherals, central processing units for computers, CD-ROM drives, DVD drives, and CD-RW drives" in International Class 9, are the same as, in competition with, similar to, related to, complementary to, and/or within the scope of, Opposer's EZ80 Goods, Z80 Class 9 Goods, Z80 Class 16 Goods, and/or Z8 Goods, and travel in the same, similar, and/or related channels of trade to consumers.

18. Applicant's alleged stylized mark, EZ??, so resembles Opposer's EZ80 Mark, Z80 Mark, Z8 Mark, and/or Family of Marks, as to be likely, when used on or in connection with the EZ?? Goods, to cause confusion, or to cause mistake, or to deceive, within the meaning of 15 U.S.C. Section 1052(d), Section 1063(a) and Section 1125(a), Section 2(d), Section 13(a), and Section 43(a) of the Trademark Act of 1946, to Opposer's damage and detriment.

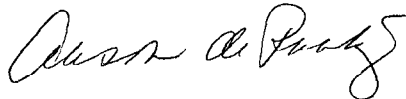
19. Applicant's alleged stylized mark, EZ??, when used on or in connection with the EZ?? Goods, would cause dilution of the distinctive quality of Opposer's EZ80 Mark, Z80 Mark, Z8 Mark, and/or Family of Marks, within the meaning of 15 U.S.C. Section 1052, Section 1063(a), and Section 1125(c), Section 2, Section 13(a), and Section 43(c) of the Trademark Act of 1946, to Opposer's damage and detriment.

20. If Applicant is permitted to register EZ??, the registration would give Applicant a *prima facie* exclusive right to use EZ?? on or in connection with the EZ?? Goods, to Opposer's damage and detriment.

21. If Applicant is permitted to register EZ??, Opposer's rights to its EZ80 Mark, Z80 Mark, Z8 Mark, and/or Family of Marks, and its use thereof, will be injured and damaged.

WHEREFORE, Opposer prays that U.S. Trademark Application No. 76/219,371 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,



K. Alison de Runtz
Attorney for Opposer
Reg. No. 37,119

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on November 7, 2002.

Mongie Danning November 7, 2002

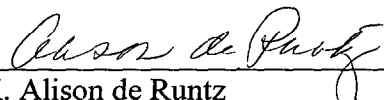
(Signature)

(Date)

DECLARATION

The undersigned, K. Alison de Runtz, declares that she is attorney for Opposer, ZiLOG, Inc. and is authorized to execute this Notice of Opposition and Declaration on behalf of said corporation; that she has read and signed the Notice of Opposition and knows the contents thereof that all statements made therein of her own knowledge are true and that all statements made therein on information and belief are believed to be true; and further that all statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document for Opposition.

Dated: Nov. 7, 2002



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TTAB
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November 7, 2002

VIA FIRST CLASS MAIL

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
Attention: TTAB

11-12-2002
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

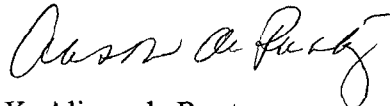
Re: Notice of Opposition
Applicant: Atoz Technology (Taiwan) Inc.
Mark: EZgo
Serial No.: 76/219,371
Published: June 11, 2002
Our Reference: 11599.425

Sir:

Enclosed herewith is a Notice of Opposition (in duplicate) against serial number 76/219,371. Please charge the filing fee of \$300.00 (plus any additional fees which may be required) to our Deposit Account Number 19-2386.

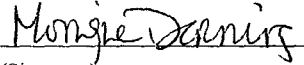
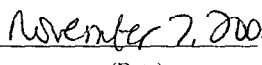
A return receipt postcard and duplicate copy of this letter are enclosed for your convenience.

Respectfully submitted,



K. Alison de Runtz
Attorney for Opposer
Reg. No. 37,119

ADR/md
Enclosure
903247 v1

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on November 7, 2002.	
	
(Signature)	(Date)